

Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, D. C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re Applications of)	MM No. <u>93-41</u>
)	
TRIAD FAMILY NETWORK, INC.)	BPED-910227MD
Winston-Salem, North Carolina)	
Channel 207C3)	
)	
POSITIVE ALTERNATIVE RADIO, INC.))	BPED-911119MC
Asheboro, North Carolina)	
Channel 207A)	
)	
For Construction Permit for a)	
New Noncommercial Educational)	
FM Station)	

TO: Administrative Law Judge
 Joseph P. Gonzalez

**REPLY TO OPPOSITION TO PETITION TO ENLARGE ISSUES
 AGAINST TRIAD FAMILY NETWORK, INC.**

Positive Alternative Radio, Inc. ("Radio"), through its counsel, submits hereby its Reply to the Opposition of Triad Family Network, Inc. ("Triad") to Radio's Petition to Enlarge Issues filed April 8, 1993. In reply thereto, Radio shows as follows:

1. In its original Petition, Radio showed that Triad had falsely certified that it was financially qualified to construct the station proposed by its application, and in fact Triad was not financially qualified, requiring a financial issue against it. Triad's bank letter, obviously submitted to demonstrate financial qualification, was but part of a scheme to convince the Commission that Triad had sufficient funds to construct

its proposed station when in fact it did not and knew that it did not. Radio showed that the Triad bank letter was no commitment at all, and constituted a sham, designed to deceive the Commission into the conclusion that Triad was financially qualified.¹

2. In its Opposition, Triad now has attempted to back away from its previously submitted bank letter. In order to extricate itself from the web of deceit which it has woven, Triad now claims that the only purpose of submitting the bank letter was to show that principal Watson "had a prior financial relationship with the bank".² It is now patent that despite its pious disavowal, Watson did in fact contemplate a loan from Southern National Bank of North Carolina. In his February 4, 1991 letter submitted with the Triad application, banker Nichols states:

As with any customer in Mr. Watson's good standing, Southern National Bank will entertain any additional financing requests. (Emphasis supplied).

The same phrasing is used in the penultimate paragraph:

It appears to me that Mr. Watson has made appropriate plans to secure any additional funds needed from outside sources, other than the bank. (Emphasis supplied).

3. There can be no reasonable dispute that Triad would secure from "outside sources" funding in addition to that provided by the bank. Triad now seeks to repair

¹ Oh what a tangled web we weave
when first we practice to deceive
Scott: Marmion

² And why would an applicant demonstrate that it had "a prior financial relationship" with a bank other than to show that it would attempt to borrow money from the bank?

the damage to its application done by the "no-commitment" bank letter which it now disavows. It claims that both its principal Watson and Watson's father had agreed to loan up to \$40,000.00 (\$36,000.00 plus a 10% cushion); if this were true and correct, Triad would have had available \$80,000.00 and the submitted bank letter would not be necessary since these "additional funds" would more than pay for construction of Triad's proposed station.³ Triad has cited several cases for the proposition that the Commission has held that non-liquid assets several times the liquid assets required to construct a station can provide reasonable assurance of financial ability. Those cases, Real Life Educational Foundation of Baton Rouge, Inc., FCC 93-181, released April 16, 1993; Cannon's Point Broadcasting Co., 93 FCC 2d 643, 647 (Rev. Bd., 1983); International Broadcasting Co., 3 FCC 2d 449, 451 (Rev. Bd. 1966); Ocean County Radio Broadcasting Co., 5 RR 2d 996, 998 (Rev. Bd. 1965); United Artists Broadcasters, Inc., 4 RR 2d 453, 458-59 (Rev. Bd. 1964). Either those cases (a) involved (Real Life) rich and established organizations, i.e. Jimmy Swaggart Ministries (net worth of \$120 million) and United Artists (net worth of \$52 million); or (b) instances in which financial issues were added and on the basis of evidence submitted at hearing, the applicant was found financially qualified: International Broadcasting Co. and Cannon's Point Broadcasting Co.; or (c) where the

³ If Triad's statement at page 6 of its Opposition "moreover, while Mr. Watson's and Dr. Watson's net liquid assets themselves exceed those necessary to fund a \$40,000.00 loan. . ." is intended to mean that each has net liquid assets in excess of \$40,000.00, such is untrue to the extent that Watson's net liquid assets are but \$3,500.00.

applicant (Ocean County Radio Broadcasting Co.) supplied a loan commitment from a financial institution to back up its proposed funding. Hence, none of the cited authorities is in point sufficiently to support the position of Triad.

4. In Triad's Opposition, Watson and his father have submitted what purport to be financial statements as of March 8, 1991 and February 27, 1991, respectively.⁴

5. The 1991 financial statements of Watson Sr. and Watson Jr. confirm the need for a financial issue against Triad. For example, Watson Jr. lists liquid assets of but \$3500 and some non-liquid assets of \$887,189. Of these, only "office building and land \$240,000" is supported by appraisal. Offsetting this is the mortgage of \$222,978, which reveals an equity of only \$17,000 in the office building property.

The other non-liquid Watson Jr. assets: real estate, automobiles, HH possessions.

Watson is to open the door to a sky-the-limit proposal to finance applications before the Commission. Indeed, Watson could well have attributed a value of a million dollars each to the enumerated items and in the absence of a requirement that he provide some substantiation thereof, he could handily circumvent the Commission's requirements for demonstration of adequate financing. Only through the "crucible of cross examination" can the Presiding Judge determine whether the estimates of value made by Watson are entitled to evidentiary consideration.⁵ A single example will suffice: the valuation of WBFJ, a 1 kw daytimer at over \$300,000 reveals the inflation of Watson's figures.⁶

6. Watson Sr.'s financial statement shows two figures for "Checking Accounts" and "Checking Account" totaling \$6705, his only liquid assets other than possibly his retirement fund of \$47,500 (on which he would pay at least 25% federal income tax plus state income tax upon withdrawal). Against this he has a home equity loan of almost \$50,000. Again, he submits no appraisal or other underpinning of the claimed evaluations of his home, furniture & antiques, silver, personal, etc.,

⁵ No estimate is provided for hearing costs.

⁶ Apparently the Watsons cannot agree on the WBFJ evaluation: Jr. has listed his 51% at \$191,250.00 for a total evaluation of \$375,000.00, but Sr. lists his 49% at \$147,000.00, for a total evaluation of the station of \$300,000.00. Neither has submitted any basis for the diverse estimates.

two automobiles, office furniture, equipment (?), or "workshop systems".⁷ For the Presiding Judge to accept the off-the-cuff estimates made by Watson Jr. and Watson, Sr. is to open the door to the most flagrant abuse of the Commission requirement that an applicant demonstrate financial fitness. The availability of funding for Triad's proposal is based almost entirely upon the non-liquid holdings of Watson Jr. and Watson Sr. No substantiation of the value or marketability of these non-liquid assets has been provided, or even sought by Triad. The Commission has long required a valid appraisal of real property which is relied upon as a source of funds. Capital City Community Interests, Inc., 62 RR 2d 1452, 1457 (1987). See Rose Broadcasting Co., 68 FCC 2d 1242, 1246, 43 RR 2d 1317 (1978); Las Americas, 1 FCC Rcd at 787-788 (the need to substantiate the evaluation of real property and fixed assets with appraisals and showings of marketability).

7. The burden of proof is upon applicant Triad to demonstrate its financial qualifications, not upon Radio to disprove the estimates made by Triad's principal and his father. The values attributed by both to their non-liquid assets are speculative and optimistic. If they can be supported by probative evidence, such as independent appraisals, Triad has nothing to fear from a financial issue; if they cannot be supported, Triad is not financially qualified. Only through the addition of a financial issue can the Commission be assured that Triad has sufficient funding available to construct its proposed station.

⁷ With respect to WBFJ, he lists "Difference between Receivable and Payable" of \$5,000.00, but Watson, Jr. makes no such claim. Who is correct?

CERTIFICATE OF SERVICE

I, Margaret A. Ford, Office Manager of the law firm of Booth, Freret & Imlay, do hereby certify that copies of the foregoing REPLY TO OPPOSITION TO PETITION TO ENLARGE ISSUES AGAINST TRIAD FAMILY NETWORK, INC. were mailed this 6th day of April, 1993, to the offices of the following:

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